

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 5/24/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Real Estate Sales Contract

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Real Estate Sales Contract between the City of Huntsville and Triad Properties Holdings, LLC, for a 14.08 acre Tract of real property located in Cummings Research Park West.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 1,400,960

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head 

Date: 5-23-12

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Real Estate Sales Contract by and between the City of Huntsville and Triad Properties Holdings, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said contract is substantially in words and figures similar to that certain document attached hereto and identified as "REAL ESTATE SALES CONTRACT BETWEEN THE CITY OF HUNTSVILLE AND TRIAD PROPERTIES HOLDINGS, LLC," consisting of seven (7) pages including Exhibit A, and the date of May 24, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of May, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of May, 2012.

Mayor of the City of
Huntsville, Alabama

REAL ESTATE SALES CONTRACT

STATE OF ALABAMA)
COUNTY OF MADISON)

This Real Estate Sales Contract ("Contract") entered into on this the 24th day of May, 2012, by and between City of Huntsville a municipal corporation in the State of Alabama ("Seller") and Triad Properties Holdings, LLC, its successors and assigns ("Purchaser").

WITNESSETH:

For in consideration of the sum of the promises and mutual covenants hereinafter set forth, and for other and valuable consideration hereinafter provided, the parties do hereby agree as follows, to wit:

I. AGREEMENT TO BUY AND SELL

The Purchaser agrees to buy and the Seller agrees to sell an approximately **14.08** acre Tract of real property described in Exhibit "A", attached hereto and incorporated herein by reference in accordance with the covenants and conditions of this Contract. Prior to the closing date, Seller shall have the larger tract of which the Property is a part properly subdivided by Plat recorded in the Madison County Probate Records, to Purchaser's reasonable satisfaction. Purchaser's obligation to close is conditioned upon same.

II. DUE DILIGENCE PERIOD

Between the execution date of this Contract and the date of Closing, Purchaser and Purchaser's agents, employees, contractors, representatives and other designees (collectively the "Purchaser's Designees") shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, conducting surveys, mechanical and structural engineering tests, and conducting any other investigations, examinations, tests and inspections as Purchaser may reasonably require to assess the condition of the Property; provided however, that (i) any activities by or on behalf of Purchaser, including, without limitation, the entry by Purchaser or Purchaser's Designees with respect to the Property ("Purchaser's Activities") shall not damage the Property in any manner whatsoever, and (ii) in the event the Property is altered or disturbed in any manner in connection with any of Purchaser's Activities, Purchaser shall immediately return the Property to the condition existing prior to Purchaser's Activities.

President of the City Council
of the City of Huntsville, Alabama
Date _____

Purchaser shall have until the date one hundred twenty (120) days after the date the Contract was fully executed (the "Due Diligence Date") to perform such investigations, examinations, tests and inspections as Purchaser shall deem necessary or desirable to determine whether the Property is suitable and satisfactory to Purchaser in its sole discretion. In the event that Purchaser shall determine, in its sole and absolute discretion, that the Property is not suitable and satisfactory to Purchaser, Purchaser shall have the right to terminate the Contract by delivering written notice to the Seller not later than the Due Diligence Date. In the event Purchaser gives Seller notice of termination, any earnest money paid to Seller by Purchaser shall be promptly returned to Purchaser, all rights and obligations of the parties under this Contract shall expire, and this Contract shall become null and void.

III. PURCHASE PRICE

In consideration of the Seller's agreement to sell the Tract to the Purchaser, Purchaser agrees to pay to Seller the sum of \$99,500 per acre, for a total price of \$1,400,960 payable in full on the date of closing as hereinafter defined. If a final survey to be provided by Seller reveals the total acreage is more or less than 14.08 acres, the Purchase Price shall be adjusted accordingly.

IV. CLOSING

Except as otherwise agreed, Closing shall occur upon five (5) days' notice by Purchaser to Seller at the Office of the City Attorney of the City of Huntsville or such other place as agreed upon by the parties. Closing shall occur not more than one hundred twenty (120) days from the date hereof; provided, however, at the election of the Purchaser, Seller shall grant an additional thirty (30) days without requiring additional compensation therefor.

V. CONVEYANCE

Seller agrees to convey said property and will furnish to Purchaser a good and merchantable title by a properly executed warranty deed substantially in the form attached hereto as Exhibit "B", free from any and all encumbrances, subject only to easements, restrictions set out in the attached deed, rights-of-way of record, ad valorem taxes due and payable for the year 2012, and the protective covenants of Cummings Research Park West, as recorded in Deed Book 826 at Page 602 in the Office of the Judge of Probate of Madison County. If, subsequent to the execution of the contract, the Purchaser determines to finance this venture, through Industrial Development Bonds, or to apply for an industrial development grant, then, upon Purchaser's request, said deed shall be delivered in the name of the Industrial Development Board of the City of Huntsville, a public corporation and instrumentally organized under the laws of the State of Alabama, as Grantee. Purchaser understands said restrictions are binding on the property and may be amended from time to time and Purchaser agrees that Purchaser shall comply with said restrictions as amended. If, prior to closing, Purchaser discovers a defect in or objection to title to the property, Seller, at

Seller's option, shall have a reasonable time (but not in excess of thirty (30) days following the receipt of Purchaser's written notice of objections) within which to cause the same to be cured. If the defects or objections are not timely cured to Purchaser's satisfaction, (i) Purchaser may waive such defects and proceed to close or (ii) Purchaser may cancel its agreement by notice of writing to Seller, and any money paid to Seller pursuant to this contract, shall be refunded to Purchaser within fifteen (15) business days of such notice (including interest payments for extensions); and each of the parties shall be released from further liability to the other. Purchaser shall notify Seller of any defect or objections in writing within ten (ten) days following receipt or notice of such title defect.

VI. CONSTRUCTION

Purchaser agrees to obtain a building permit, complete all site preparation, and to commence the actual physical construction of the facility thereon, as approved by the Architectural Control Committee, within twelve (12) months from the date of the conveyance, and to diligently pursue without material interruption, Force Majeure Events (hereinafter defined) excepted, the construction of the said facility until completed according to approved plans and specifications. As used herein, the term "Force Majeure Events" shall mean any events or occurrences whatsoever which prevent or delay Purchaser's performance hereunder and which are beyond the reasonable control of Purchaser, including without limitation, an act of God, war, riot, civil commotion, or other disturbance, sovereign conduct, national emergencies, acts of civil or military authority, strike or other labor difficulties, fire, flood, catastrophe insurrection, power or other utility failure, transportation failure, or governmental action. In the event Purchaser fails to begin substantial construction within the time described above, then the Seller may, at its option, within three hundred sixty (360) days of Purchaser's failure, repurchase the above described Tract of land for a sum equal to the total purchase price paid by the Purchaser therefore plus the reasonable value of any improvements. Purchaser also understands that there are certain building restrictions in existence with respect to property located within Cummings Research Park West, and that certain approvals are necessary for the design and construction of any structure(s) on the Tract. Purchaser agrees to comply with any and all rules and regulations with respect to structures on the Tract, as they may be amended from time to time. Purchaser will indemnify and hold harmless Seller from and against any and all liability arising out of the destruction of or damage to the property, or injuries or loss to, or death of any person in connection with the development, improvement or construction by Purchaser upon the real property described herein, or any activity or project conducted thereon by Purchaser, other liability for any loss, damages or injuries that may result from Seller's own intentional, negligent or wrongful acts. The provisions of this paragraph shall survive the closing.

VII. DEFAULT

Should Purchaser fail to carry out the terms and conditions of this Contract in accordance, with all of its provisions, this contract shall terminate with no further obligations between the

parties and Seller shall retain any money paid to Seller as liquidated damages. Should Seller fail to carry out this Contract in accordance with all of its provisions, (1) Purchaser shall have the option to demand a refund of any monies or an extension interest Purchaser may have paid or caused to be paid to Seller, together with payment to Purchaser by Seller of any sums expended by Purchaser for title opinions, and upon payment of such sums to Purchaser by Seller, this Contract shall terminate, or (2) Purchaser may, without demanding a return of any money, proceed with a suit for specific performance of this contract. In the event that any breach or default by any party to this Contract results in legal proceedings, the party adjudged to be in default shall pay, in addition to such other sums as may be due hereunder, the costs and expenses of such legal proceedings, including the reasonable attorney's fees of the other parties

VIII. ADDITIONAL PROVISIONS

- A. **Policies and Procedures- Hazardous Materials.** Purchaser shall develop and implement policies and procedures for the storage, use, receipt and disposition of any hazardous materials that come onto its premises. Purchaser will not offer or accept, under these policies, hazardous materials for transportation in commerce unless said materials are properly classed, described, packaged, marked, labeled, and in such condition for proper shipment as required under Title 49 Code of Federal Regulations, Parts 171-179. The packaging of hazardous materials coming into or going out of its facilities shall be maintained in compliance with the regulations specified for each specific mode of transportation. This includes the proper handling and transport of all materials via air, highway, rail or water.

Materials handling, as part of all manufacturing operations, will be conducted within the confines of the building. This will include the inspection of product, material packing/unpacking, and all functions requiring product or by-product preparation for transportation.

In the event by-product material removal becomes necessary, procedures will be placed into effect to ensure proper removal. Prior to the transport of materials, complete material evaluation will be conducted to ensure proper compliance with all applicable transportation requirements. All options will be evaluated for the beneficial reclamation or recycling for by-product material.

Purchaser insures that its intrastate, interstate, and internal operations will be in compliance with all applicable requirements, and that it will fully comply with all federal, state, and local laws, regulations or ordinances regarding environmental, safety, industrial hygiene, and/or hazardous material requirements.

IX. APPROVALS BY THE CITY. Wherever in this Agreement the approval of the City is required (other than approval of any contract or written agreement) such approval shall not be unreasonably withheld.

X. ENTIRE AGREEMENT

This contract, with Exhibit A attached hereto, and the restrictions and covenants of as herein referenced, constitute the entire agreement between the parties. All statements, representations covenants heretofore made and any other agreements not incorporated herein are void and of no force and effect.

IN WITNESS WHEREOF, the parties have entered their hands and seals and attest to the same with the signature of the Mayor being the official act of said municipality in accordance with his duly constituted authority.

THE CITY OF HUNTSVILLE, ALABAMA,
a municipal corporation in the State of Alabama

BY: _____
Tommy Battle
Its Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

TRIAD PROPERTIES HOLDINGS, LLC

BY: _____

ITS: _____

WITNESS:

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that **Tommy Battle**, whose name as Mayor of THE CITY OF HUNTSVILLE, and **Charles E. Hagood**, it's Clerk Treasurer, are signed to the foregoing Contract and who are known to me, acknowledged before me on this day that, being informed of the contents of such instrument, they, with full authority, executed the same voluntarily for and as the act of said City of Huntsville, on the day the same bears date.

Given under my hand this the _____ day of May, 2012.

NOTARY PUBLIC

My Commission Expires: _____

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **Triad Properties Holdings, LLC**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such _____ and with full authority, executed the same voluntarily for and as the act of said Triad Properties Holdings, LLC.

Given under my hand this the _____ day of May, 2012.

NOTARY PUBLIC

My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT "A"

Subject Property described as:

All that part of the Southeast Quarter of Section 01, Township 4 South, Range 2 West particularly described as beginning at the Southeast Corner of said Section 01; thence following the South Section line North 89 Degrees 30 Minutes West 1146.7 feet to a point; thence North 00 Degrees 57 Minutes East 113.9 feet to the true point of beginning; thence from the true point of beginning North 88 Degrees 58 Minutes 56 Seconds West 1051.47 feet to a point; thence North 01 Degrees 01 Minutes 04 Seconds East 631.02 feet to a point of the right of way of Bob Heath Drive; thence along a curve to the left having a radius of 82 Degrees with a chord bearing and distance of North 59 Degrees 30 Minutes East 89.5 feet and a arc length of 94.56 feet to a point; thence South 81 Degrees 10 Minutes East 811.8 Feet to a point; thence South 26 Degrees 06 Minutes 15 Seconds East 356.55 feet; thence South 00 Degrees 57 Minutes West 251.62 feet to the point of beginning containing 14.1 acres more or less.

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 5/24/2012

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Real Estate Sales Contract - CRP West

Document Name: Real Estate Sales Contract between the COH and Triad Properties Holdings

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance: 1,400,960

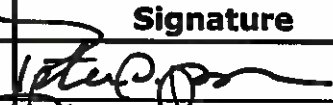


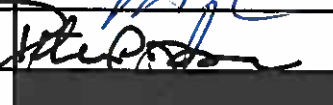
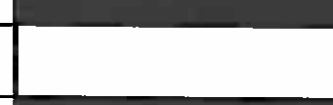
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating		5-21-12
2) Legal		5-21-12
3) Finance 		5/22
4) Originating		5-21-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		